

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
THOMASVILLE DIVISION

DENNY GAY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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6:97-CR-11 (WLS)
6:05-CV-5

28 U.S.C. § 2255

ORDER

Before the Court is a Report and Recommendation from United States Magistrate Judge G. Mallon Faircloth (Doc. 257), filed February 3, 2005. It is recommended that Petitioner's motion for relief pursuant to 28 U.S.C. § 2255 be denied. Petitioner has filed a timely objection to the recommendation. (Doc. 259).

In his objection, Petitioner argues that the holding in Booker/Fanfan declaring the United States Sentencing Guidelines unconstitutional is retroactive, and therefore, enabling Petitioner to be re-sentenced. United States v. Booker-Fanfan, 125 S. Ct. 738 (2005). The Magistrate Judge correctly pointed out that Booker/Fanfan has no retroactive effect. Therefore, the Court rejects and overrules the objection filed by Petitioner.

Upon full consideration of the record, the Court finds that said Recommendation should be and hereby is, **ACCEPTED, ADOPTED** and made the order of this Court for reason of the findings and reasons set out therein, together with the findings made, reasons stated and conclusions reached herein. Accordingly, Petitioner's motion for relief (Doc. 255) is **DENIED and DISMISSED**.

SO ORDERED, this 21st day of June, 2006.

/s/W. Louis Sands
W. Louis Sands, Chief Judge
United States District Court